



Agricultural Marketing Service

7 CFR Part 915

[AMS-SC-21-0040]

Avocados Grown in South Florida; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement an Avocado Administrative Committee recommendation to increase the assessment rate established for the 2021-22 and subsequent fiscal years. The proposed assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be submitted on the Internet at: <https://www.regulations.gov>. Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <https://www.regulations.gov>. All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of individuals

or entities submitting comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Abigail Campos, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 291-8614, or Email: Abigail.Campos@usda.gov or Christian.Nissen@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, or Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Agreement No. 121 and Marketing Order No. 915, both as amended (7 CFR part 915), regulating the handling of avocados grown in south Florida. Part 915, (referred to as "the Order") is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." The Avocado Administrative Committee (Committee) locally administers the Order and is comprised

of growers and handlers operating within the area of production, and a public member.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This proposed rule has been reviewed under Executive Order 13175 - Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications. AMS has determined that this proposed rule is unlikely to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing Order now in effect, Florida avocado handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable Florida avocados for the 2021-22 fiscal year, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15) (A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule would increase the assessment rate established for the Committee for the 2021-22 and

subsequent fiscal years from \$0.35 to \$0.45 per 55-pound bushel container of avocados.

The Order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. Nine of ten members of the Committee are producers and handlers of Florida avocados. They are familiar with the Committee's needs and with costs for goods and services in their local area and are able to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting and all directly affected persons have an opportunity to participate and provide input.

For the 2016-17 and subsequent fiscal years, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal year to fiscal year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on April 14, 2021 and recommended 2021-22 expenditures of \$348,484 and an assessment rate of \$0.45 per 55-pound bushel container of avocados. In comparison, last year's budgeted expenditures were \$280,484. The assessment rate of \$0.45 is \$0.10 higher than the rate currently in effect. During the last few seasons, the Committee has not funded research projects.

However, the laurel wilt disease continues to challenge the avocado industry. The Committee discussed the need for research funding and added \$80,000 to its proposed budget for this research and recommended increasing the assessment rate to cover the additional expense. At the current assessment rate, assessment income would equal only \$280,000, an amount insufficient to cover the Committee's anticipated expenditures of \$348,484. By increasing the assessment rate by \$0.10, assessment income would be \$360,000. This amount should provide sufficient funds to meet 2021-2022 anticipated expenses.

Major expenditures recommended by the Committee for the 2021-22 year include \$116,164 for salaries, \$80,000 for research, and \$53,350 for employee benefits. Budgeted expenses for these items in 2020-21 were \$116,164, \$0, and \$53,350, respectively.

The assessment rate recommended by the Committee was derived by reviewing anticipated expenses, expected shipments of Florida avocados, and the amount of funds in reserve. Avocado shipments for the year are estimated at 800,000 55-pound bushel containers, which, as mentioned before, should provide \$360,000 in assessment income (80,000 containers x \$0.45). Income derived from handler assessments at the proposed rate, along with interest income, should be adequate to cover budgeted expenses. Funds in the reserve (currently about \$250,000) are

expected to be kept within the maximum permitted by the Order (approximately three fiscal years' expenses as authorized in § 915.42).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. Dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public, and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2021-22 budget and those for subsequent fiscal years would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact

of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 325 producers of Florida avocados in the production area and 25 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than \$1,000,000, and small agricultural service firms are defined as those whose annual receipts are less than \$30,000,000 (13 CFR 121.201).

According to the National Agricultural Statistical Service (NASS), the average grower price paid for Florida avocados during the 2020-21 season was \$21.97 per 55-pound bushel. Utilized production was equivalent to 624,364 55-pound bushels for a total value of over \$13,718,830. Dividing the crop value by the estimated number of producers (325) yields an estimated average receipt per producer of \$42,212, so the majority of producers would have annual receipts of less than \$1,000,000.

USDA Market News reported April 2021 terminal market prices for green skinned avocados were about \$36.43 per 24-pound container. Using this price and the total utilization, the total 2020-21 handler crop value is estimated at \$52.1 million. Dividing this figure by the number of handlers (25) yields an estimated average annual handler receipts of over \$2 million, which is below the SBA threshold for small agricultural service firms. Thus, the majority of Florida avocado producers and handlers are classified as small entities.

This proposal would increase the assessment rate established for the Committee and collected from handlers for the 2021-22 and subsequent fiscal years from \$0.35 to \$0.45 per 55-pound bushel container of avocados. The Committee recommended 2021-22 expenditures of \$348,484 and an assessment rate of \$0.45 per 55-pound bushel container. The proposed assessment rate of \$0.45 is \$0.10 higher than the previous rate. The quantity of assessable avocados for the 2021-22 season is estimated at 800,000 55-pound bushel containers. Thus, the \$0.45 rate should provide \$360,000 in assessment income and be adequate to meet this year's expenses.

Major expenditures recommended by the Committee for the 2021-22 fiscal year include \$116,164 for salaries, \$80,000 for research, and \$53,350 for employee benefits.

Budgeted expenses for these items in 2020-21 were \$116,164, \$0, and \$53,350, respectively.

In recent years, the Committee did not fund any research. However, Committee members believe further research is needed to address laurel wilt disease and voted to commit \$80,000 to research in the coming fiscal year. At the current assessment rate and with the 2021-22 crop estimated to be 800,000 55-pound bushel containers, assessment income would equal only \$280,000, an amount insufficient to cover the Committee's anticipated expenditures of \$348,484. By increasing the assessment rate by \$0.10, assessment income would be approximately \$360,000. This amount should provide sufficient funds to meet 2021-22 anticipated expenses. Consequently, the Committee recommended increasing the assessment rate.

Prior to arriving at this budget and assessment rate, the Committee considered information from various sources, including its Research Subcommittee. The Committee discussed alternative expenditure levels based upon the relative value of various activities to the south Florida avocado industry. The Committee ultimately determined that 2021-22 expenditures of \$348,484, including additional funds for research, were appropriate, and the recommended assessment rate, along with interest income, should generate sufficient revenue to meet its expenses.

A review of historical information and preliminary information pertaining to the upcoming season indicates that the grower price for the 2021-22 season should be around \$20-25 per 55-pound bushel container of avocados. Therefore, the estimated assessment revenue for the 2021-22 fiscal year as a percentage of total grower revenue would be between 1.8 and 2.25 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, these costs are minimal and uniform on all handlers. Additionally, these costs would be offset by benefits derived by the operation of the marketing order.

The Committee's meeting was widely publicized throughout the Florida avocado industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the April 14, 2021 meeting was a public meeting, and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by the Office of

Management and Budget (OMB) and assigned OMB No. 0581-0189 Fruit Crops. No changes in those requirements would be necessary as a result of this proposed rule. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large Florida avocado handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this action.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, 7 CFR part 915 is proposed to be amended as follows:

PART 915 - AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 915.235 is revised to read as follows:

§ 915.235 Assessment rate.

On and after April 1, 2021, an assessment rate of \$0.45 per 55-pound container or equivalent is established for avocados grown in South Florida.

Erin Morris, Associate Administrator.
Agricultural Marketing Service.

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